

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	MDL NO. 1456
AVERAGE WHOLESALE PRICE)	C.A. No. 01-CV-12257 (PBS)
LITIGATION)	
<i>THIS DOCUMENT RELATES TO:</i>)	HON. PATTI B. SARIS
)	
COUNTY OF SUFFOLK,)	
)	Case No. 01-CV-12257 (PBS)
v.)	
)	
ABBOTT LABORATOIRES, INC., et al.)	
)	
E.D.N.Y Case No. CV-03-229)	
)	

DEFENDANTS' MOTION TO STRIKE OR FOR LEAVE TO FILE A REPLY

On June 14, 2004, defendants submitted a 1½ page notice of supplemental authority that advised this Court of a very recent New York state court decision, New York v. Pharmacia Corp., GlaxoSmithKline, PLC and Aventis Pharmaceuticals, Inc., Index Nos. 905-04, 905-03 and 1150-03 (Albany County) (the “New York opinion”), that addressed a number of issues presently pending before this Court in connection with defendants’ motion to dismiss. On June 18, 2004, plaintiff Suffolk County, without seeking prior leave of this Court, served an argumentative 5½ page “Response” that is (a) inappropriate under Local Rule 7.1(b)(3); and (b) inaccurate and misleading in its description of the New York opinion and its relationship to this case.

Accordingly, defendants hereby move to strike Suffolk County’s “Response to Defendants’ Notice of Supplemental Authority.” Alternatively, defendants respectfully request leave to reply to that Response. The thrust of defendants’ reply would be that the New York

opinion does not address defendants' argument that Suffolk County does not have standing to sue because it is an "indirect purchaser." Further, the New York opinion does not reach the causation argument advanced by defendants in this case -- i.e. that the State determines the Medicaid reimbursement rates.

Dated: June 24, 2004

Respectfully submitted,
ON BEHALF OF ALL SERVED DEFENDANTS

By: /s/ Lucy Fowler
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-and-

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for defendants contacted counsel for plaintiffs regarding the issues addressed in this motion but was unable to resolve or narrow the issues.

/s/ Lucy Fowler
Lucy Fowler

CERTIFICATE OF SERVICE

I certify that on June 24, 2004, a true and correct copy of the foregoing Motion to Strike or for Leave to File a Reply was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties.

/s/ Lucy Fowler
Lucy Fowler